



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OLC LRE FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord obey the provisions of the Act and restrict the landlord's entry to notice periods pursuant to section 29.
- b) To recover the filing fee for this application.

### **SERVICE:**

The tenant gave sworn evidence that the Application for Dispute Resolution was served personally and the manager agreed they received it.

### **Preliminary Issue:**

The landlord named by the tenant in the Application is actually the manager. She requested the correct name of the landlord be used in Decisions and Orders. The tenant had no objection to the amendment. The amendment is granted to show the landlord's name on this Decision and Order.

### **Issue:**

Is the tenant entitled to an Order that the landlord obey the provisions of the Act regarding Notice of Entry and to recover the filing fees for this Application?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to make submissions and provide evidence. When the landlord referred to some photographs submitted in evidence, the tenant objected that she had not received the landlord's evidence by registered mail as she had been out of town. The landlord said she had served it correctly and I pointed out that this would be deemed (presumed) service which can be rebutted by the tenant's evidence that she was out of town and did not receive it. However, rather than adjourn the hearing to another time, as the evidence provided was not relevant to the issue of legal obligations to serve notices, I suggested we carry on with the hearing without consideration of this evidence and the parties agreed. The

undisputed evidence is that the tenancy commenced in May 2010, rent is \$1070 per month including parking and a security deposit of \$475 was paid.

The tenant explained that she had a business and was often not able to answer the door or telephone and was frequently out of town. She finds it is very important to receive written notices of entry in accordance with section 29 of the Act and that the timelines of the Act be observed so that she is prepared for the entry or able to suggest alternate times. There was evidence of a number of entries without sufficient notice.

The landlord explained that she tries in all ways to accommodate all the tenants in respect to entering their units. However, sometimes contractors require entry at very short notice, such as when the building had a new fire alarm system installed. She said she has a good relationship with this tenant and does not want to infringe on her rights in any way but she often does not get sufficient notice from contractors of their need to enter suites. Both parties agreed that there were some entries without the required 24 hour notice if the additional days provided for service under section 90 of the Act are counted for a notice on the door or by mail.

**Analysis:**

As discussed in the hearing, the Act sets out certain legal obligations of landlords and tenants. Section 29 provides in most cases that notice of entry must be served and sections 88 and 90 provide obligations for method and timing of service of the notice. For reference, the sections are set out below:

**29** (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

*(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees; ...*

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

**88** *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

*(a) by leaving a copy with the person;*

*(b) if the person is a landlord, by leaving a copy with an agent of the landlord;*

*(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*

*(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*

*(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*

*(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*

*(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*

*(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*

- (i) as ordered by the director under section 71*
- (1) [director's orders: delivery and service of documents];*

**When documents are considered to have been received**

**90** *A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents] is deemed to be received as follows:*

- (a) if given or served by mail, on the 5th day after it is mailed;*
- (b) if given or served by fax, on the 3rd day after it is faxed;*
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;*
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.*

Based on the above legislation, I find the landlord must give the tenant 24 hours notice of entry and if served on the door or by mail, this means that the notice is not deemed to be received until the third day after taping it to the door or putting it in the mail slot. This means that if the notice is taped on the door on February 12<sup>th</sup> at 10 a.m., it would be deemed to be received on February 15<sup>th</sup> at 10 a.m. and effective 24 hours later on February 16 at 10 a.m.

Although the landlord's manager, through no fault of her own, has been pressed by subcontractors to gain entry outside of these timelines, I find the landlord, except in an emergency, has the obligation to ensure that the tenant is given legal notice of entry and to so inform the tradespeople.

**Conclusion:**

I find the tenant entitled to an Order that the landlord obey the legal requirements of the Act to serve Notice at least 24 hours in advance of entry into her suite and to serve this Notice taking into account the timelines as set out in section 90 of the Act. I find the tenant entitled to recover her filing fee for this application.

In accordance with the Decision:

**I HEREBY ORDER THE LANDLORD to serve any Notices to Enter the tenant's unit, except in cases of emergency, at least 24 hours in advance of the entry in accordance with section 29 of the Act and to observe the timelines under section 90 of the Act for service.**

**I HEREBY ORDER that the tenant is entitled to recover \$50 for the filing fee. I ORDER that the tenant may recover this fee by deducting \$50 from her rent for March 2015 which means her rent for March 2015, including parking, will be \$1020.**

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 12, 2015

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Residential Tenancy Branch

